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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL JURISDICTION

NOTICE OF MTION No. 2421 OF 2006
IN
SUIT No. 1037 OF 2006

Manohar Kisan Hire Plaintiff

Vs.

Ramesh Kisan Hire & Ors. Defendants

Mr. K. N. Kore, advocate for the plaintiff.

CORAM : S.J. VAZIFDAR, J.

DATE : AUGUST 28, 2007.

PC

. This suit is filed for a declaration that one Kisan Gangaram Hire died intestate, leaving the plaintiff and the defendants as his only heirs and legal representatives, for a declaration of the share of the plaintiff and the defendants in the estate of the deceased and for partition thereof by metes and bounds. The plaintiff has also sought an order for possession of his share in the estate of the deceased and for accounts.

2. The deceased had two wives - one Shahubai and one Kasubai both of whom predeceased him. The deceased expired on 11-11-2004.

3. The plaintiff, defendant Nos. 1, 2, 7, 8, one Shantaram, and one Lata are the children of the deceased and Shahubai. Shantaram and Lata predeceased the deceased. Defendant Nos. 3, 4, 5 are the children of Shantaram, and defendant No.9 is the son of the said Lata.

4. One Kamalabai is the daughter of the deceased and his second wife Kasubai. Kamalabai predeceased the deceased. Defendant Nos. 10 and 11 are the children of Kamalabai.

5. No affidavit in reply has been filed in spite of the defendants having been served.

6. From the facts stated, which remained uncontroverted, the plaintiff undoubtedly has a share in the estate of the deceased. In the correspondence, some of the defendants have alleged that the deceased had left behind a will. However, no affidavit in reply has been filed. Moreover, it is stated at the bar that to the best of the plaintiff's knowledge no application for probate of the alleged will has been made.

7. In the circumstances, the Notice of Motion is made absolute in terms of prayer clause (a), (b) and (e). The Court Receiver however shall not dispossess the parties from the possession of immovable properties, and shall appoint them as agents without security but on payment of royalty. Prayer (c) shall be complied with within 12 weeks from today.

8. Liberty to the plaintiff to apply for further reliefs by a fresh Notice of Motion after Prayer (c) is complied with.